

In the Matter of Beverly Schnegelsberger, Burlington City
CSC Docket No. 2011-516
(Civil Service Commission, decided April 6, 2011)

Beverly Schnegelsberger, a former Police Aide with the Burlington City Department of Public Safety, represented by Jessica Shaw, Staff Representative, CWA Local 1040, appeals the determination of her layoff rights by the Division of State and Local Operations (SLO).

By way of background, the appointing authority submitted a layoff plan to this agency with an effective layoff date of August 1, 2010. Upon approval of the plan, 45-day notices were sent to the affected employees. On July 22, 2010, SLO issued letters to the affected employees advising them of their layoff rights. The appellant was advised that she would be laid off from her permanent title of Police Aide as she did not have any displacement rights. In reviewing her layoff rights, SLO determined that the movement from her permanent title, Police Aide, to her prior-held permanent title of Police Records Clerk is now considered a promotion. In this regard, the title of Police Aide is assigned class code "00," while the title of Police Records Clerk is assigned class code "01." Thus, since *N.J.A.C.* 4A:8-2.2(f) only provides for the exercise of *demotional* title rights to prior-held permanent titles, SLO was unable to provide the appellant with the option of exercising a prior-held title right to the title of Police Records Clerk. Consequently, the appellant was advised that she was placed on a special reemployment list for Police Aide and her layoff would be recorded, effective August 1, 2010.

On appeal to the Civil Service Commission (Commission), the appellant maintains that the determination that she did not possess any displacement rights was incorrect. Specifically, she argues that she previously held the title of Police Records Clerk, and that there are currently two individuals in that title who possess less seniority than she does. Therefore, she maintains that she is entitled to one of those positions.

Personnel records indicate that the appellant was appointed to the competitive title of Police Records Clerk, effective May 22, 2000. She was provisionally appointed, pending promotional examination procedures, to the title of Police Aide, effective August 20, 2002 and was permanently appointed to the title, effective July 8, 2003.¹ On April 26, 2004, the appellant took a leave of absence to take an unclassified appointment to the title of

¹ The appellant applied for and was admitted to the promotional examination for the title of Police Aide (PM0302E). The appellant was appointed from the July 7, 2003 certification (PL030979) of that eligible list.

Confidential Assistant.² She returned to her permanent title of Police Aide, effective August 28, 2006. As a result of the layoff, the appellant's employment was terminated effective August 1, 2010.

Personnel records also indicate that there are two employees currently serving in the title of Police Records Clerk, Kathleen White and Renee Dela-Pena. Both White and Dela-Pena received temporary appointments to the title of Clerk, effective September 10, 2001. White and Dela-Pena were permanently appointed to the competitive title of Police Records Clerk, effective November 1, 2001 and December 31, 2001, respectively.

CONCLUSION

N.J.A.C. 4A:8-2.2(f) provides that demotional layoff rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. It further provides that in such cases, displacement may be made only on the basis of greater permanent continuous service except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement. *N.J.A.C.* 4A:1-1.3 defines a "demotion" in local service as a reduction in title or scale of compensation, and in State service a reduction in class code. *N.J.A.C.* 4A:1-1.2(c) provides that the Civil Service Commission (Commission) may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

It is noted for the record that in local service, non-supervisory/managerial title class codes have been established by departmental practice *generally* utilizing the following criteria:

Trainee Level (00): This level generally contains the word "trainee" within the title. This designation is usually used for non-professional or clerical titles having no requirements.

Entry Level (01): This level generally requires no more than one year of experience or, in some cases, no experience. Titles having no experience, but requiring a degree and/or having knowledge and abilities are considered entry level titles.

² *N.J.A.C.* 4A:8-2.4(d)3 provides, in part, that leaves without pay to accept unclassified appointments shall not be deducted from seniority calculations. Therefore, the appellant's seniority is calculated from her initial date of hire.

Experienced (02): This level generally requires two years of experience and has no supervisory responsibility. Titles at this level are generally considered to be at the “senior” level.

Master (03): This level generally requires three years of experience and has no responsibility for performance evaluations. Titles at this level are generally considered to be at the “principal” level.

In this case, as noted above, the title of Police Aide is assigned class code “00,” while the title of Police Records Clerk is assigned class code “01.” Thus, even though the appellant was promoted from Police Records Clerk to Police Aide, she was unable to exercise a prior-held demotional title right to her prior title because it was assigned a higher class code than her title of Police Aide.

Initially, as noted in *In the Matter of Joseph Haney, et al.* (MSB, decided August 29, 2007), a reasonable and accepted aspect of a promotion is that the employee receives greater compensation. The converse is also true. It is reasonable to expect lesser compensation when accepting a demotion. *N.J.A.C.* 4A:3-4.1(a) states that, in local service, appointing authorities shall establish compensation plans which provide for paying employees in reasonable relationship to their job titles, and this agency is generally not involved in the development of local compensation plans, unless an appointing authority asks for assistance. As this agency does not establish or administer local compensation schedules, defining a promotional or demotional movement by way of compensation, from a classification perspective, cannot be accomplished. Nevertheless, *N.J.S.A.* 11A:3-1(a) mandates that this agency establish, administer, amend, and continuously review a classification plan for political subdivisions. Given that more than 350 local service jurisdictions and 20 of the State’s 21 counties have adopted the provisions of Title 11A, which represents more than 110,000 different job positions to be classified, with each jurisdiction having differing levels of compensation for positions that are similarly classified, it is necessary that titles in the local service classification plan be evaluated utilizing an objective method to identify job similarities.

The classification system for local service titles was originally developed using occupational group categorizations, as recognized by the United States Department of Labor, as a reasonable and objective method for identification of job similarities. The system utilized job evaluation factors such as education and experience, work duties and characteristics, and supervisory responsibilities as components of the classification system. However, when determining local service class codes, the former Division of

Human Resource Management³ determined local service class codes based on an assessment of the title's level and an evaluation of the amount of experience and education required to perform the duties outlined in the job specification.⁴ As such, the work duties and characteristics of the positions or the amount of compensation are not factors in identifying class codes for local service titles.

In this case, it is evident that, at one point, the movement from the title of Police Records Clerk to the title of Police Aide was considered a promotion, since the appellant was appointed from a promotional list when advancing from the Police Records Clerk title. Moreover, prior to the creation of class codes for local Civil Service titles, a demotional right to a prior-held title was based on whether that title would be considered a demotion for that individual in that specific jurisdiction. The Commission finds that it would be inequitable to deny the appellant a demotional title right to the title of Police Records Clerk based on the use of the local class codes, which has resulted in the movement from Police Records Clerk to Police Aide to now be considered a demotion and not a promotion. *See In the Matter of Robert Tanis* (CSC, decided September 15, 2010). Accordingly, the Commission finds that is appropriate to provide the appellant with a demotional right to her previously held title of Police Records Clerk.

A review of personnel records reveals that Dela-Pena, who holds a Police Records Clerk title, possesses the least amount of permanent continuous service, and thus, the appellant's demotional right should be to Dela-Pena's position of Police Records Clerk. *See N.J.A.C. 4A:8-2.2(f)*. Therefore, the appellant should be returned immediately with seniority and benefits to her previously held title of Police Records Clerk, which is currently held by Dela-Pena. Accordingly, SLO is to issue amended layoff rights letters to the appellant and Dela-Pena.

Finally, it is noted that, pursuant to *N.J.A.C. 4A:2-1.5(b)*, in all appeals other than disciplinary and good faith layoff appeals, back pay and counsel fees may be granted as a remedy where an appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. In *In the Matter of Anthony Hearn*, 417 *N.J. Super.* 289 (App. Div. 2010), the court noted that no rule had been promulgated limiting an award of attorney's fees for sufficient cause under *N.J.A.C. 4A:2-1.5(b)* to a showing of bad faith or invidious motivation by the agency. The court explained that

³ Now, SLO.

⁴ SLO is currently in the process of developing a more precise method of categorizing local service titles.

interpreting and restricting the meaning of that phrase through adjudication rather than rulemaking was contrary to *N.J.S.A.* 11A:2-22 and the Administrative Procedure Act. Accordingly, since nothing in *N.J.A.C.* 4A:2-1.5(b) authorized the Commission to define “sufficient cause” as synonymous with “bad faith or invidious motivation,” utilizing the adjudication process to do so made a material change in the meaning of “sufficient cause” and the court found that the Commission erred in denying Hearn’s request for attorney’s fees since he was required to prove bad faith or invidious motivation. In the absence of more specific guidance by rule regarding the discretion of and limitation upon the Commission in awarding attorney’s fees to a prevailing appellant, the court in *Hearn* considered the merits of the case as well as an Administrative Law Judge’s recommendation to award attorney’s fees and concluded that sufficient cause existed to award attorney’s fees. In other words, in the absence of a rule to define “sufficient cause” for purposes of the application of *N.J.A.C.* 4A:2-1.5(b), the court evaluated the various merits of Hearn’s case and concluded that sufficient cause had been established.

Although *Hearn, supra*, addressed only the issue of counsel fees, the rule provision in question, *N.J.A.C.* 4A:2-1.5(b) applies the same standard to back pay awards. In evaluating the underlying merits of the appellant’s case, the Commission finds that other sufficient cause is not evident in this case. Initially, the record does not evidence that the appellant’s original determination of layoff rights was done in bad faith or with invidious motivation. Rather, upon review of the matter, the Commission has determined that a fairer result would be to provide the appellant with a demotional right to her previously held title of Police Records Clerk, even though it is no longer considered a demotion, since it had been previously considered a promotion for the appellant. Therefore, the instant matter is akin to administrative error and generally, no vested or other rights are accorded by an administrative error. See *Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O’Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998). Accordingly, based on the specific merits of this case, other sufficient cause has not been established for an award of back pay.

However, if the appellant is not returned to the title of Police Records Clerk within 20 days of the date of issuance of this decision, she shall be entitled to back pay beginning on the 21st day to the date of actual reinstatement.

ORDER

Therefore, it is ordered that this appeal regarding the determination of layoff rights be granted and Beverly Schnegelsberger's layoff be rescinded and she be granted a prior-held demotional title right to the title of Police Records Clerk, which is currently held by Renee Dela-Pena, effective August 1, 2010. It is also ordered that back pay not be awarded. However, if the appellant is not reinstated within 20 days of the date of issuance of this decision, she shall be entitled to back pay beginning on the 21st day to the date of actual reinstatement.

It is further ordered that SLO issue layoff rights letters in accordance with this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.